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SUBJECT: NEW TNA INTERPRETATION OF "VOTER" COULD SPARK SUNNI PROTEST

Classified By: CHARGE D'AFFAIRES DAVID M. SATTERFIELD FOR REASONS 1.4 (b) AND (d).

¶1. (C) SUMMARY. Two days before recess, the Transitional National Assembly (TNA) passed a resolution on October 2 that could dim the hopes of Sunni Arabs seeking to vote down the constitution. The resolution inconsistently defines the word nakhabeen, or "voters", as it appears in Article 61 (c) of the TAL. Under the new clarification, the constitution would pass if a majority of voters ("those who vote") approve the constitution and if two-thirds of the voters ("those who are registered to vote") do not veto the constitution. Thus, the TNA resolution interprets the word "voters" to have two different meanings at two different places in the same sentence. It would be harder for Sunni Arabs to muster two-thirds of the registered voters in three provinces, a benchmark not intended in the TAL. We are hearing different justifications from different Shia Coalition leaders about why this resolution is needed. In any case, UN officials believe that this interpretation fails to meet international standards and are meeting with TNA officials. We already are starting to get charges from Sunni Arabs that the process is discredited, and this likely will build. We have emphasized to Iraqi leaders that this provision is problematic and are working with the UN election team and the British Embassy to convince the Shia Coalition to let the Independent Election Commission make its own determination in line with international standards. END SUMMARY.

DEFINING THE WORD "NAKHABEEN"

¶2. (C) TAL Article 61 (C) reads " The general referendum will be successful and the draft constitution ratified if a majority of voters in Iraq approve and if two-thirds of the voters in three or more governorates do not reject it." The TNA resolution interprets the word "voters" to have two different meanings in the same sentence. According to the TNA resolution, the referendum will pass if a majority of the "voters" who participate on referendum day approve it and if in three provinces two-thirds of "registered voters" - not merely those who vote on referendum day - do not vote against it. Although this resolution is not a legally binding determination, it is the only definition of the term "Nakhabeen" on record and was officially voted on in the TNA.

HOW THE VOTE WENT DOWN

¶3. (C) The Legal Committee introduced the resolution to parliament. After the resolution was read, TNA members were asked if there were any objections. Since none were raised, TNA members then were asked to vote on the interpretation. One hundred and forty-one members voted to support the measure, and the remaining ten members present from the Iraqia list refrained from voting.

UN OPPOSES RESOLUTION

¶4. (C) UN officials strongly oppose this provision. After meeting with TNA Deputy Speaker Sharastani on October 3, UN/EAD Carina Pirelli told PolOffs that if this provision holds, the UN would declare that the referendum does not meet international standards and would check with the General Assembly for next steps. Pirelli will meet once again with Sharastani, Abdul Mehdi, and Barham Saleh to convince TNA members to back out of this resolution. Pirelli told PolOff that TNA members were surprised by the international response, and she believes that TNA members believed that this issue would not result in such a backlash.

SHIA ACKNOWLEDGE FEAR CONSTITUTION TO FAIL

¶5. (C) Deputy President Adil Abdul Mahdi told Charge on October 3 that he understood U.S. concerns about the TNA decision. He explained that the Shia reacted very strongly to the bombing in Balad and took it as a signal that there

will be voter intimidation in Salahadin and other areas that are considered supportive of the Constitution. He asked for assurances that voter intimidation would not occur. Charge recommended that he work with the UN to set up a mechanism whereby incidents of voter intimidation would be promptly investigated. Mahdi suggested that the President could make a statement countering the TNA resolution. Charge said that it is better to keep the matter within the TNA and repudiate it there.

16. (C) Leading Shia Coalition member Humam Hammudi told PolOff October 2 that the idea originally had been proposed by KDP parliamentary leader Saddi Barzinji. With Charge October 2, Muwaffak Rubai'e, the Iraqi National Security Advisor, vehemently defended "fixing" the referendum to ensure passage of the constitution. Otherwise, the Sunni Arabs could well defeat the draft on October 15, he predicted, and the American government should recognize the extent of the resulting political defeat. Charge warned Rubai'e that the National Assembly risked destroying the credibility of the process and seeing gaps emerge between its position on Iraqi democracy and our own. PolCouns on October 3 similarly warned Hammudi that the new TAL interpretation would hurt the referendum's credibility internationally, as well as hurt the likelihood of pulling more Sunni Arabs into the political process. Hammudi retorted that the insurgents would target Shia voters in battleground governorates like Diyala, forcing the Shia voters to stay at home and thus allowing Sunni Arab voters to defeat the draft constitution. PolCouns also cautioned Deputy Speaker Aref Taifur on October 3 that the resolution would cause major problems. Taifur did not argue back and said that the TNA planned to meet again on October 3 to discuss its resolution and then would meet the UN again.

17. (C) Another leading Shia Coalition member, Ali Dabagh, opined to PolCouns October 3 that a small turnout in Anbar that was heavily negative should not count the same as large turnout in a Shia heartland province that was heavily favorable. PolCouns warned about the referendum's credibility at home and abroad, cautioning that Iraq needed more international support, not criticism. Debbagh conceded that, although he had voted for the provision, he avoided trying to justify it in the media when asked to do so. Although Rubai'e told Charge October 2 that Ayatollah Sistani supported the TNA resolution, Debbagh was more guarded. He said that the Najaf clergy was nervous the draft would fail, but he carefully avoided saying that they had taken a position on the resolution.

18. (C) Many Iraqi leaders were unaware that this resolution was proposed. When the DCM met with Prime Minister Jaafari the evening of October 2, Jaafari was surprised to learn of this resolution. On October 3, PolOff spoke with Iraqi Islamic Party Leader Naseer Al-Ani who had also just been informed of the provisions and found the provision disturbing. He told PolOff that he would review the provision with his party. National Dialogue Council Leader Saleh Mutlak has told reporters that he would not consider a referendum conducted under the new interpretation to be valid.

PROPOSED FIXES

19. (C) Although this resolution is technically not legally binding, it has staying power. It therefore needs to be neutralized. The first way would be to convince TNA members to amend the resolution. An amendment could provide a consistent and equitable interpretation of the word voter. The second option would be for the IECI to issue regulations or a statement. UN/EAD Pirelli told PolOff that this could result in a power struggle between the TNA and the IECI possibly leading up to Supreme Court involvement. The third option would be to establish a minimum threshold of voter turnout that would be needed before the veto clause, "if two-thirds of the voters in three or more governorates do not reject it," could be applied.

COMMENT

10. (C) This resolution shows that Shia and Kurdish coalition members are clearly worried that the constitution won't pass the referendum. Their fear of a targeted terror campaign against Shia voters to keep them away from the polls leads them to conclude that the draft constitution might lose in a swing governorate like Salah ad-Din or Diyala. Unfortunately, rather than considering amendments to win broader Sunni Arab support, they have decided to play with the rules of the game. Iraqi leaders clearly have our message that they have chosen a bad method of addressing a real concern. The best option now is to let the IECI interpret the TAL and the referendum law in line with

international standards.

¶11. (C) The local UN has relayed this issue to New York but does not yet have an official response. Charge met with the British and UN charges, and all agreed that the suggested interpretation is problematic. They will meet the morning of October 4 with Shia leaders to focus on the Shias' real security concerns as a way to deal with the impetus of the resolution. Also, evening of October 3, MNF-I was tasked with developing (on an urgent basis) a focused security plan for those cities in Salah ad-Din, Diyala and Ninewa provinces containing Shia population clusters and believed by our Shia interlocutors to be most at risk of intimidation.

¶12. (C) Finally, in a late evening call to Charge, Rubai'e said that Mohammed Ritha Sistani had been briefed on the UN-proposed fix establishing a minimum threshold for a "no" vote and had sought his father's views. According to Rubai'e, MRS said his father wanted to know the U.S. position before any decision was taken. Charge reiterated to Rubai'e our concern over the impact of a last-minute change in the rules in order to address what had been outlined to us as a security concern. Charge told Rubai'e no action should be taken in the TNA (Sharistani, according to Rubai'e, intended to propose the UN language Tuesday morning) until discussion had been had on a Coalition/Iraqi Security Forces security plan to address Shia concerns. Charge noted that, if the Shia are now preoccupied with the idea of a Sunni "no" vote, the best way to address the issue would be adoption of the constitutional changes proposed by Ambassador Khalilzad, rather than the dubious short-cut now being proposed. Rubai'e said he would inform MRS and would await the outcome of discussions on security issues, but he reiterated his bottom line: "the Sunnis should not be allowed to vote down the constitution." Charge cautioned that the political fix being advocated not only was likely (if not certain) to produce a "no" vote from the overwhelming majority of Sunnis but also would call into question the credibility of the entire referendum in the eyes of the international community.

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